

REMARKS

Claims 1-2 and 4-8 remain pending in the above-identified application, and stand ready for further action on the merits. Editorial revisions are made in claims 1 and 5.

This response is supplemental to that previously filed on July 24, 2006, and filed in response to the Notice of Non-Compliant Amendment dated October 6, 2006.

New Matter Question

In the prior Notice of October 6, 2006, the Examiner states as follows at page 4 of the Notice with regard to the previously-proposed amendments of claims 1 and 5:

"Additionally, it is noted that the last paragraphs added to claims 1 and 5 respectively appear to introduce new matter since as originally filed the elastic members 9 collectively or elastic members 61 collectively or both collectively include elastic members arranged in a width direction in portion(s) of the diaper in which it is now claimed that no elastic members are arranged in the width direction and each of the elastic members 9 has ends which extend and are arranged in the extended position in the width direction in portion(s) of the diaper in which it is now claimed that no elastic members are arranged in the width direction. Note also the direction and location of the ends of the leg elastic members as claimed in claims 4 and 8 also."

As no new matter rejection has actually issued, applicants view the Examiner's comments regarding the amendment of the claims as merely advisory by nature. Applicants also disagree with the preliminary view of the Examiner that the proposed amendments of claims 1 and 5 constitute new matter. However, in an attempt to clarify applicants' position on this point, the following remarks are presented for consideration by the Examiner.

By their previous amendment of claims 1 and 5 applicants intended to amend claims 1 and 5 to state that the portion opposite to the portion having the fastening tapes across the crotch portion does not have the “under-waist elastic member 8”.

It appears to be the Examiner’s view that the ends of arched leg elastic member 9, and plural elastic members 61, can collectively be construed as “being arranged in a width direction” of the diaper.

In an attempt to clarify this aspect of the claimed invention, claims 1 and 5 are amended to state that the relevant portion of the diaper does not contain elastic members “oriented in a width direction” of the diaper. By way of clarification, elastic members 8 are oriented in a width direction, while elastic members 61 are merely believed to be in a width direction.

Claims 1 and 5, as amended, are now believed to more clearly define the invention in a manner which avoids the interpretation given by the Examiner to the previous claim language.

In view of the above, all outstanding rejections and objections are believed to be without basis, and should be withdrawn.

The application is believed to be in condition for allowance, and an early indication of same is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) to expedite prosecution in connection with the present application towards allowance.


If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.


**37 CFR § 1.111 Reply to
Office Action of October 6, 2006**

**Attorney Docket No. 0445-0315P
Serial No. 10/058,087**

Respectfully submitted,

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By 
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